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BEFORE THE FEDERAL ELECTION COMMISSION

2005 MAY 25 P 1:28

In the Matter of

Patriot National Bank

Timothy Longino

Philip Giordano

Thomas M. Ariola, Jr., in his personal capacity

Giordano for U.S. Senate Committee and its treasurer

MUR 5453

SENSITIVE

GENERAL COUNSEL'S REPORT # 8

I. ACTIONS RECOMMENDED

1. Take no further action against Patriot National Bank, and close the file as to this respondent.
2. Take no further action against Timothy Longino, and close the file as to this respondent.
3. Take no further action against Philip Giordano, and close the file as to this respondent.
4. Take no further action against Thomas M. Ariola, Jr. in connection with 2 U.S.C. § 434(b)(3)(A).
5. Take no further action against Giordano for U.S. Senate Committee and its treasurer in connection with 2 U.S.C. §§ 432(i) and 434(b)(3)(A).
6. Find reason to believe that Thomas M. Ariola, Jr. violated 2 U.S.C. §§ 434(a)(1) and (b)(2) in his personal capacity, and enter into pre-probable cause conciliation with this respondent.
7. Enter into pre-probable cause conciliation with Giordano for U.S. Senate Committee and its treasurer in connection with 2 U.S.C. §§ 441b(a) and 441a(f).
8. Approve the attached Factual and Legal Analysis for Thomas M. Ariola, Jr.
9. Approve the attached conciliation agreements.
10. Approve the appropriate letters.

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II. INTRODUCTION AND OVERVIEW

Based upon information contained in a referral from the Reports Analysis Division ("RAD"), the Commission found, *inter alia*, reason to believe that Patriot National Bank ("PNB") violated 2 U.S.C. § 441b(a); the Giordano for U.S. Senate Committee and its treasurer ("the Committee") violated 2 U.S.C. §§ 441b(a), 441a(f), 432(i), and 434(b)(3)(A); Thomas M. Ariola, Jr., former Deputy Treasurer, violated 2 U.S.C. §§ 441b(a), 441a(f), and 434(b)(3)(A) in his personal capacity; Timothy Longino violated 2 U.S.C. § 441a(a)(1)(A); and Philip Giordano ("the Candidate") violated 2 U.S.C. §§ 441b(a) and 441a(f).¹ The RAD referral showed, *inter alia*, an apparent prohibited bank loan from PNB, excessive contributions from the Candidate's family members in connection with a certificate of deposit pledged as collateral for the loan, other apparent excessive and prohibited contributions, and reporting violations for failure to provide identifying information for a significant number of contributors and failure to use best efforts to obtain the missing contributor identifying information.

The Commission permitted us to engage in formal and informal discovery, as necessary, to investigate the Committee and the named respondents concerning the facts and circumstances surrounding the conduct described above. The Commission further authorized pre-probable cause conciliation with Mr. Longino, and approved a conciliation agreement

The investigation revealed that the loan from PNB to the Committee was supported by 100% cash collateral in the form of the certificate of deposit held jointly by the Candidate and his

¹ The Commission also found reason to believe that the Candidate's spouse (Dawn Giordano) and his father-in-law (Salvatore Trovato) made excessive contributions to the Committee in connection with the certificate of deposit pledged as collateral for the PNB loan to the Committee in violation of 2 U.S.C. §§ 441a(a)(1)(A) and (a)(3). The Commission further found reason to believe that former Treasurer James S. Paolino violated 2 U.S.C. §§ 441b(a) and 441a(f) in his personal capacity in connection with the PNB loan and the certificate of deposit.

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1 spouse. Therefore, it appears that PNB made the loan in the ordinary course of business and on a
2 basis which assures repayment in compliance with the Federal Election Campaign Act of 1971,
3 as amended ("the Act"),² and the Commission's regulations.

4 The investigation further revealed that the monies paid by Mr. Longino to the Committee
5 in October 2000, were not contributions as defined by the Act, but rather were a refund of a
6 portion of his Campaign Manager salary made under duress.

7 On February 28, 2005, Mr. Ariola pled guilty in United States District Court for the
8 District of Connecticut to, among other counts, knowingly and willfully accepting excessive and
9 prohibited contributions while he was Deputy Treasurer of the Committee. Our investigation
10 with respect to the Committee and former Deputy Treasurer Mr. Ariola was completed
11 information
12 regarding the pending parallel criminal investigation of Mr. Ariola and other respondents; copies
13 of the Committee's campaign records; and obtained a Fed. R. Crim. P. 6(e)(3) Order, which
14 permitted us access to copies of the Committee's bank records and the F.B.I.'s financial analysis
15 of those records.³ The Committee's bank records, and the F.B.I.'s financial analysis of those
16 records showed that \$18,248.78 in receipts were deposited into the Committee's bank account
17 while Mr. Ariola was Deputy Treasurer, but not reported on the Committee's disclosure reports.
18 Furthermore, our review of the Committee's campaign records shows that attempts were made by

² All of the facts in this matter occurred prior to the effective date of the Bipartisan Campaign Reform Act of 2002 ("BCRA"), Pub. L. 107-155, 116 Stat. 81 (2002). Accordingly, unless specifically noted to the contrary, all citations to the Act herein are as it read prior to the effective date of BCRA and all citations to the Commission's regulations herein are to the 2002 edition of Title 11, Code of Federal Regulations, which was published prior to the Commission's promulgation of any regulations under BCRA.

³ The Giordano Congressional Exploratory Committee's and the Giordano for U.S. Senate Committee's bank records were reviewed and analyzed. For simplicity's sake, this Report does not differentiate between the two Committees and refers to both as "the Committee."

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Mr. Ariola and the Committee to obtain the missing contributor identifying information. We also contacted a random sampling of contributors identified on the Committee's disclosure reports. Based upon the information we received from the contributors, we believe that the contributions reported were actually made.

The investigation further revealed that Mr. Giordano is continuing to serve his 37-year jail sentence for crimes unrelated to campaign finance issues, is facing additional state charges for those crimes, and has little or no assets or income.

We recommend that the Commission take no further action against Patriot National Bank, Timothy Longino, and Philip Giordano, and close the file as to those respondents. We further recommend that the Commission enter into pre-probable cause conciliation with the Giordano for U.S. Senate Committee and its treasurer, and Thomas M. Ariola, Jr., former Deputy Treasurer in his personal capacity, and approve the attached proposed conciliation agreements.⁴

III. ANALYSIS

A. *The Loan from Patriot National Bank to the Committee Was Made in Accordance with the Act and the Commission's Regulations.*

The Commission found reason to believe that PNB violated 2 U.S.C. § 441b(a) in connection with the \$300,000 loan to the Committee on July 14, 2000, based upon the available facts derived from the Committee's Schedule Cs, Schedule C-1s, copies of the loan documents attached to its disclosure reports, and responses to various Requests for Additional Information

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1 ("RFAIs"). Those documents showed that: (1) the loan apparently was under collateralized by
2 approximately \$40,000;⁶ (2) the loan had been restructured many times, initially, with the
3 Candidate's father-in-law (Mr. Salvatore Trovato) as a co-guarantor of the loan; (3) Mr. Trovato
4 was a board member of PNB at the time the loan was granted, and possibly unduly influenced the
5 granting of the loan due to his position; and (4) the circumstances surrounding the loan's
6 collateral, *i.e.*, a \$300,000 certificate of deposit and real estate, both jointly owned by the
7 Candidate and his spouse, were not clear. See First General Counsel's Report dated May 3,
8 2004, pp. 8-11.

9 In the ensuing investigation, PNB provided an affidavit from Philip W. Wolford, current
10 Chief Operating Officer, and at the time the loan was applied for and granted, President of PNB.
11 His affidavit describes the loan application process, the restructuring of the loan, Mr. Trovato's
12 role in connection with the loan, and the collateral used for the loan. Attached to Mr. Wolford's
13 affidavit were copies of bank records regarding the loan. PNB also responded to our informal
14 discovery request, providing copies of its internal guidelines and procedures for granting
15 commercial lines of credit and loans to board members. In addition, in response to a Right to

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⁶ The documents provided by the Committee show that \$150,000 (one-half of the certificate of deposit) and the Candidate's equity in the home he owned jointly with his spouse were used as collateral for the loan. The real estate purportedly collateralized \$110,000 of the \$300,000. However, according to the loan documents, the home's fair market value was \$220,000, and it was encumbered by a mortgage in the amount of \$124,000. The Candidate's equity in the home appeared to be one-half of \$220,000 (FMV) minus \$124,000 (the amount of the mortgage), or \$48,000, rather than the \$110,000 stated as collateral for the loan. See First General Counsel's Report dated May 3, 2004, pp. 9-11. Even if the Candidate could claim all of the equity in the real estate as his, the collateral for the loan still fell short by \$40,000. *Id.*

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1 Financial Privacy Act subpoena to PNB requesting documents and information about the
2 certificate of deposit pledged as collateral for the loan, PNB provided copies of the bank's
3 documents regarding that certificate of deposit and its use as collateral for the loan to the
4 Committee.

5 Based upon the loan documentation and the affidavit from Mr. Wolford, it appears the
6 bank loan from PNB to the Committee was made in the ordinary course of business and on a
7 basis which assures repayment in accordance with the Act and the Commission's regulations.
8 See 2 U.S.C. § 431(8)(B)(vii); see also 11 C.F.R § 100.7(b)(11). PNB followed all of its usual
9 and customary practices before approving in February 2000 the original \$200,000 loan to the
10 Exploratory Committee with Mr. Trovato as co-guarantor, including conducting a credit check,
11 and removing Mr. Trovato from the boardroom while the loan approval was discussed. Wolford
12 Affidavit, ¶¶ 4, 8-11. The terms of the original loan were contained in a written instrument and
13 the interest rate, 18% (prime +1 %), was the usual and customary interest rate at the time for
14 commercial loans. *Id.*, Tab 5.

15 Similarly, when PNB approved the first restructured loan in April 2000, increasing the
16 loan from \$200,000 to \$300,000, PNB again followed all of its internal procedures and
17 guidelines for making loans to board members. Wolford Affidavit, ¶¶ 12-17. The first
18 restructured loan was also evidenced by a written instrument, with specified repayment dates and
19 interest rates, which were PNB's usual and customary interest rates at the time. *Id.*, Tabs 5 and
20 9.

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1 Trovato's position as a board member of PNB unduly influenced PNB in making the original and
2 first restructured loans.

3 In July 2000, the Committee asked PNB once again to restructure the loan, this time
4 removing Mr. Trovato as a co-guarantor, and replacing Mr. Giordano as a co-borrower. Wolford
5 Affidavit, ¶ 18. After reviewing Mr. Giordano's personal financial information, PNB agreed to
6 consider restructuring the loan for a second time, with Mr. Giordano as co-borrower, provided that
7 the second restructured loan was fully cash secured. Wolford Affidavit, ¶ 19. Mr. Giordano and
8 the Committee proposed depositing \$300,000 in the form of a certificate of deposit to secure the
9 second restructured loan. *Id.* PNB followed its customary practices and procedures in approving
10 the second restructured loan. Mr. Giordano completed a Commercial Loan Application, and a
11 credit approval request. Wolford Affidavit, ¶ 20. A new loan agreement to the Committee and
12 Philip Giordano was approved in the amount of \$300,000, with an interest rate of 8.07% (2%
13 above the interest rate the certificate of deposit was earning); the purpose of the loan was "working
14 capital." Wolford Affidavit, ¶ 22 and Tab 14. The creditworthiness of the second restructured
15 loan was based on the cash collateral in the form of a certificate of deposit in the names of Philip
16 and Dawn Giordano. Wolford Affidavit, ¶ 23. Philip and Dawn Giordano signed agreements
17 pledging the entire certificate of deposit as collateral for the second restructured loan. Wolford
18 Affidavit, Tabs 12 and 13. "PNB was satisfied that the [July 2000] loan was virtually risk free to
19 PNB, and that repayment was assured." Wolford Affidavit, ¶ 23.

20 After the second restructured loan had been approved, the Committee requested that PNB
21 take additional collateral in the form of a mortgage on Mr. Giordano's home. Wolford Affidavit,
22 ¶ 24. "PNB responded that it did not need a pledge of the home because the certificate of deposit

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would fully secure the loan.” *Id.* The Committee indicated to PNB that pledging the home would help Mr. Giordano comply with campaign finance regulations, so at the Committee’s request, PNB took a mortgage on the real estate owned by the Candidate and his spouse as additional collateral on the second restructured loan. However, because the loan was already fully secured, under banking regulation 12 C.F.R. § 34.43, PNB was not required to perform an appraisal of the real property. Wolford Affidavit, ¶ 25.

The second restructured loan was repaid in full by Philip Giordano in March 2001 using \$150,000 from the certificate of deposit, and \$150,000 from the proceeds of a new loan from PNB to Philip and Dawn Giordano. Wolford Affidavit, ¶ 33. The new loan to Philip and Dawn Giordano was secured with the remaining \$150,000 of the certificate of deposit. *Id.* In February 2002, PNB paid off the outstanding loan with the proceeds of the certificate of deposit. Wolford Affidavit, ¶ 34.

Based upon the above, it appears that that \$300,000 loan from Patriot National Bank to the Committee was made in the ordinary course of business and on a basis that assured repayment. Therefore, we recommend that the Commission take no further action against Patriot National Bank and close the file as to this respondent in this matter.⁸

B. Timothy Longino’s Payments to the Committee Did Not Constitute Contributions as Defined by the Act.

⁸ We have briefed the issue of the loan as an excessive contribution to the Committee from Salvatore Trovato, and served counsel with a copy of the General Counsel’s Brief.

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7 Based upon the information obtained during the investigation, we recommend
8 that the Commission take no further action against Mr. Longino in this matter.

9 ***1. Mr. Longino's Employment with the Committee.***

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11 On May 1, 2000, Mr. Longino commenced his employment as Campaign Manager for the
12 Committee, and he resigned on September 15, 2000. Mr. Longino indicated that he left his
13 position for four reasons. The first reason was to pursue a managerial position in private
14 industry. Second, he had disagreements with the Candidate and the Candidate's father-in-law in
15 connection with the course of action the political campaign should take. Third, the Candidate
16 was allegedly libeling Mr. Longino by stating that Mr. Longino was misusing campaign funds by
17 providing unnecessary campaign printing business to a friend's printing firm. Fourth, the

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Committee was not paying Mr. Longino as agreed.¹¹ See Longino Affidavits dated July 30, 2004 and November 11, 2004.

According to Mr. Longino, the terms of his employment as Campaign Manager provided that he was to work from May to December 2000, and receive a salary (full payment was due on or before August 2000, with the understanding that if the Committee was solvent enough to pay him additional funds after August 2000 it would do so).¹² See Longino Affidavits dated July 30, 2004 and November 8, 2004, ¶ 8(c). Mr. Longino stated that the Committee paid him a total of ¹³ See Longino Affidavit dated November 8, 2004, ¶ 3. Mr. Longino stated that he did not receive pay stubs, or even complete receipts, from the Committee regarding his salary. See Longino Affidavit dated November 8, 2004, ¶ 11. He averred that the only receipt for his salary that the Committee provided him was a columnar worksheet with handwritten check numbers and amounts totaling \$17,000. *Id.* As documentary proof of his salary and his return of a portion of that salary, Mr. Longino submitted a copy of the Schedule C to his 2000 Individual Tax Return. See Attachment to Longino correspondence to

¹¹ The dispute over Mr. Longino's salary, and that the Candidate was making accusations that Mr. Longino misused campaign funds in connection with a printing contract, are reported in at least one newspaper article, a copy of which is attached here as Attachment 1. See Suzan Bibisi, *Giordano's Ex-Chief of Staff Quits as Firefighter*, REPUBLICAN-AMERICAN, October 25, 2001.

¹² The terms of his employment with the Committee were not reduced to writing. However, he described them in an interview with staff and in a subsequent affidavit that he submitted. As Campaign Manager, he was primarily responsible for organizing the campaign plan and expenditures. His duties included coordinating direct mailings, videos, telephone banks, volunteers, and convention delegates, as well as writing political speeches for the Candidate and coordinating all town committee meetings and districts statewide. He worked on average 100 to 120 hours a week. He stated that he never attended a fundraiser when he was with the campaign and did not collect any contributions.

¹³ The Committee's disclosure reports do not show salary payments made to Mr. Longino. However, on the Committee's 2000 July Quarterly Report, there is one reported disbursement to him in the amount of \$2,256 on June 15, 2000 for travel expenses. In his informal interview and in a subsequent affidavit, Mr. Longino stated that the travel reimbursement might have been for a campaign related trip he took with the Candidate and others to Washington, D.C. in early June 2000.

The investigation uncovered no information that would dispute his statements on this matter.

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Mr.

Longino also submitted copies of three check receipts from his bank account to the Committee totaling \$36,000.¹⁵

2. Mr. Longino's Payments Were Allegedly Made Under Duress and Were the Result of Intimidation by the Candidate.

When Mr. Longino resigned his position as Campaign Manager, the Candidate allegedly demanded repayment of a portion of his salary. *See* Longino Affidavit dated July 30, 2004, p. 1; *see also* Longino Affidavit dated November 8, 2004, pp. 1-2.

¶ 6. The Candidate allegedly demanded additional funds from Mr. Longino. *Id.* On October 30, 2004, Mr. Longino made two additional payments to the Committee totaling \$24,000. The total amount paid from Mr. Longino to the Committee, therefore, was \$36,000.

Mr. Longino stated that the Candidate used his position as Mayor of the City of Waterbury to intimidate Mr. Longino into making the payments.¹⁶ *See* Longino Affidavit dated November 8, 2004, pp. 1-2 and ¶ 8.

According to Mr.

¹⁵ As discussed *supra* in footnote 9, the Committee's 2000 October Quarterly Report discloses two payments totaling \$24,000 from Mr. Longino to the Committee. There are no other payments from Mr. Longino disclosed by the Committee. However, given the Committee's limited compliance with reporting requirements, the lack of information on the Committee's disclosure reports is not conclusive on this point. Furthermore, the F.B.I.'s financial analysis of the Committee's bank records shows deposits totaling \$36,000 from Mr. Longino to the Committee's bank account. *See* Attachment 2.

¹⁶ Mr. Longino remained a city employee while he was working for the Committee (he was on leave of absence from the Waterbury Fire Department when he took the Chief of Staff position to the Mayor, and later the Campaign Manager position). *See* Addendum A to Longino's Affidavit dated November 8, 2004 (Memorandum of Agreement between the City of Waterbury and Mr. Longino dated April 1999, and amendment dated March 17, 2000).

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1 Longino, these factors created an intimidating atmosphere. *Id.* He feared retribution in
2 connection with his position as a City employee, being publicly discredited, and for his physical
3 safety. *Id.* Mr. Longino stated that it was under those circumstances that he agreed to pay back a
4 portion of his salary to the Committee. *Id.* "I was being verbally attacked by a sitting Mayor
5 (Giordano) who basically was trying to get me fired at the fire department. All that I worked for,
6 for 20 years (political science major) was being question[ed] and maligned, yeah I paid [the
7 salary] back." Longino Affidavit dated November 8, 2004, ¶ 8(b).¹⁷

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13 **3. *The Payments Did Not Constitute Contributions to the Committee.***

14 The term "contribution" as defined by the Act, includes any gift, subscription, loan,
15 advance, or deposit of money or anything of value made by any person for the purpose of
16 influencing any election for Federal office. 2 U.S.C. § 431(8)(A).

17 A verbal employment agreement between Mr. Longino and the Candidate (or the
18 Committee) is confirmed in an October 30, 2000 letter signed by the Candidate. *See* Longino
19 Affidavit dated July 30, 2004, Attachment 1. According to that letter, the \$24,000 paid by Mr.
20 Longino to the Committee represented a "return of his salary based on a[n] agreement for

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1 employment on behalf of [the Committee]" and "[the Candidate] will not publicly or privately
2 discredit, accuse or make any mention of Tim Longino in any matter regarding the employment
3 agreement." *See id.* Further, on October 30, 2000, the Candidate signed a General Release – a
4 mutual release with Mr. Longino – setting forth, *inter alia*, that: "both parties agree that they will
5 refrain from public [sic] or privately making disparaging or negative comments about the other in
6 regards to any dealings with the . . . 'Giordano for U.S. Senate Campaign' or Timothy Longino
7 personally. The parties agree that all services provided for/by Timothy Longino have been
8 satisfactory [sic] completed as ordered." *Id.* According to the terms of the General Release, Mr.
9 Giordano agreed to hold Mr. Longino harmless from any further claims in regard to his
10 employment for the campaign. *Id.* Based on the circumstances described above, it appears that
11 Mr. Longino's payment of \$36,000 to the Committee was in fact a salary refund, and was not
12 made for the purpose of influencing a federal election.¹⁸

13 Therefore, there was no contribution to the Committee as defined by the Act. We
14 recommend that the Commission take no further action against Timothy Longino and close the
15 file as to this respondent.

16 **C. Philip Giordano Is Currently Incarcerated And Has Little Or No Assets To Pay**
17 **A Civil Penalty.**
18

19 The Commission found reason to believe that Philip Giordano violated 2 U.S.C.
20 §§ 441b(a) and 441a(f) in his personal capacity in connection with the prohibited bank loan from
21 PNB to the Committee, and the excessive intra-family contributions from either his spouse

¹⁸ By refunding a significant portion of his Campaign Manager salary to the Committee, Mr. Longino provided services to the Committee without compensation. However, the value of services provided by a person without compensation who volunteers on behalf of the candidate or committee is not deemed a contribution. *See* 2 U.S.C. § 431(8)(B)(i).

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1 and/or his father-in-law in connection with the certificate of deposit pledged as the loan's
2 collateral. See First General Counsel's Report dated May 3, 2004, pp. 8-11.¹⁹ The Candidate did
3 not respond to the Commission's reason-to-believe notification letter dated July 22, 2004.²⁰ As
4 discussed *supra* in Section III.A., the investigation revealed that the bank loan from PNB to the
5 Committee was made in accordance with the Act and the Commission's regulations. Therefore,
6 we recommend that the Commission take no further action against Mr. Giordano in connection
7 with this transaction.

8 Furthermore, during the course of the investigation, we came to believe that Mr.
9 Giordano has no, or very little, assets to pay any civil penalty.

10 Mr. Giordano continues to serve his 37-year jail
11 sentence for crimes unrelated to campaign finance issues, and still faces state charges for those
12 crimes. The likelihood of future gainful employment for this respondent is slim.²¹ Moreover, we
13 do not believe that the pursuit of pre-probable cause conciliation with Mr. Giordano to enforce
14 other remedies usually provided for in a conciliation agreement *e.g.*, that respondent cease and
15 desist from violating the provision at issue, would be a good use of Commission resources, due
16 to the nature of Mr. Giordano's crimes and the length of time of his incarceration. Therefore, we

¹⁹ The statute of limitations date for these transactions is July 14, 2005. The loan to the Committee was finalized on and approved on July 14, 2000, and the certificate of deposit pledged as collateral for the loan was opened on that date as well.

²⁰ We confirmed that the Candidate received the Commission's notification letter.

²¹ Although we did not obtain a financial affidavit from Mr. Giordano in this matter, we can reasonably infer from the loan documentation from PNB that PNB did not view Mr. Giordano as a good credit risk at the time, given that the bank required 100% cash collateral to secure the loan. See Wolford Affidavit dated August 20, 2004, at ¶ 9. Considering the events occurring subsequent to the loan's approval, *i.e.*, Mr. Giordano's arrest and incarceration, it is highly unlikely that he has any assets or money to pay a civil penalty in this matter.

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1 recommend that the Commission exercise its prosecutorial discretion and take no further action
2 against the Candidate in connection with the 2 U.S.C. § 441a(f) violation as well, and close the
3 file as to this respondent.

4 ***D. Thomas M. Ariola, Jr. Knowingly and Willfully Accepted Excessive and***
5 ***Prohibited Contributions on Behalf of the Committee and He Failed to Report***
6 ***All Receipts Received by the Committee.***
7

8 Since the Commission found reason to believe that Mr. Ariola violated 2 U.S.C.
9 §§ 441b(a), 441a(f), and 434(b)(3)(A) in his personal capacity, he has entered a guilty plea in
10 United States District Court for the District of Connecticut to knowingly and willfully accepting
11 an excessive and a prohibited contribution and to knowingly and willfully providing false
12 information to the Federal Election Commission.²² Information obtained during the investigation
13 also revealed that the Committee's total receipts were underreported by \$18,248.78 on disclosure
14 reports prepared by Mr. Ariola. For the reasons discussed below, we recommend that the
15 Commission find reason to believe Mr. Ariola violated 2 U.S.C. §§ 434(a)(1) and (b)(2) in his
16 personal capacity. We further recommend that the Commission authorize pre-probable cause
17 conciliation with Mr. Ariola, and approve the attached conciliation agreement

18 As the information obtained during the investigation showed that
19 best efforts were made to obtain missing contributor identifying information, we recommend that
20 the Commission take no further action against Mr. Ariola in connection with the 2 U.S.C.

²² Specifically, Mr. Ariola pled guilty to, among other things, knowingly and willfully violating 2 U.S.C §§ 441b and 441a(a)(1)(A). We believe the latter violation was meant to be 2 U.S.C. § 441a(f), as the facts upon which the plea agreement is based set forth that Mr. Ariola knowingly and willfully accepted (not made) an excessive individual contribution (in the amount of \$1,000) and a prohibited corporate contribution (in the amount of \$1,000). According to the information, in response to an RFAI dated July 3, 2001, Mr. Ariola filed a letter dated July 17, 2001 with the FEC that contained false information concerning the sources of those contributions. The information further sets forth that, Mr. Ariola "devised [the] scheme" to provide the false information to the FEC about the source of the contributions, thereby enabling the Committee to avoid refunding the contributions. His plea agreement sets forth that it does not bind any other federal authority, including the FEC, and requires him to cooperate with the government.

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1 § 434(b)(3)(A) finding against him in his personal capacity.

2 ***1. During the Time Period Mr. Ariola Was Preparing Reports, He Was***
3 ***Functioning As Treasurer of the Committee.***
4

5 Mr. Ariola, a Certified Public Accountant ("CPA"), was named Deputy Treasurer of the
6 Committee in early 2000 and remained Deputy Treasurer until he resigned on July 31, 2001.²³
7 RTB Response, p. 1; Subpoena Response, ¶ 1. During that time, he was responsible for signing
8 checks for disbursements. Subpoena Response, ¶ 1. After the Committee's treasurer resigned,
9 Mr. Ariola also began preparing and filing reports with the Commission on behalf of the
10 Committee.²⁴ To complete that task, Mr. Ariola reviewed copies of receipts and checks that had
11 been donated to the Committee, and compared copies of deposited checks with the Committee's
12 bank account statements. Subpoena Response, ¶¶ 7, 8, and 21. Mr. Ariola acknowledges that he
13 signed the 2000 October Quarterly and 2000 Pre-General Reports. Subpoena Response, ¶ 6. He
14 admits that, although he did not sign the 2000 Post-General Report, he "did write [his] name in
15 the box designated for the name of the treasurer as 'Thomas Ariola—In absence of the
16 treasurer.'" Subpoena Response, ¶ 13. His name also appears on the 2000 Year-End Report as
17 "Thomas Ariola, In Absence of the Treasurer." Subpoena Response, ¶ 6. He further admits that
18 no one helped him prepare the disclosure reports. Subpoena Response, ¶ 7. He avers that he
19 learned what information was required to appear on disclosure reports filed with the Commission

²³ Every political committee is required to have a treasurer and may designate an assistant treasurer, who shall assume the duties and responsibilities of the treasurer in the event there is a vacancy in the office, or if the treasurer is unavailable. See 11 C.F.R. § 102.7; see also 2 U.S.C. § 432(a). In this matter, there is no distinction between the term the Committee used, "Deputy Treasurer," and the "Assistant Treasurer" designation set forth in the Commission's regulations. In any event, regardless of his title, Mr. Ariola functioned as *de facto* treasurer. See discussion *infra*.

²⁴ Michael Blumenthal was the treasurer of the Committee until mid-2000, when he resigned. Subpoena Response, ¶ 4. No treasurer was appointed to the Committee after Mr. Blumenthal resigned. *Id.* Mr. Ariola was Deputy Treasurer for the Committee at all times. *Id.*

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1 by reading the instructions provided by the FEC and contained in the instructional section of the
2 reports. Subpoena Response, ¶ 23.

3 Mr. Ariola asserts that he did not believe it was his responsibility to oversee the
4 acceptance of contributions. RTB Response, p. 1. He further asserts that he was never officially
5 appointed treasurer of the Committee. RTB Response, pp. 2-3. However, Mr. Ariola admits that
6 he held the title of "Deputy Treasurer" and that he assumed the treasurer's duties. Subpoena
7 Response, ¶ 1. Furthermore, in communications with the Commission, the Committee referred
8 to Mr. Ariola as its treasurer. RTB Response, p. 4 and Exhibit A.

9 A person acting as treasurer, but not officially designated as treasurer, may be held liable
10 for reporting violations. *See e.g., FEC v. Committee to Elect Bennie O. Batts*, No. 87-5789
11 (S.D.N.Y. February 24, 1989) and accompanying pleadings filed by the FEC (setting forth in
12 detail the respective roles of the named treasurer and others performing financial duties). Based
13 on the duties performed by Mr. Ariola, including but not limited to the signing of checks for
14 disbursements, preparing reports to be filed with the Commission, comparing copies of deposited
15 checks with the Committee's bank account statements, and his official appointment as Deputy
16 Treasurer, Mr. Ariola should be treated as the treasurer of the Committee during the relevant
17 period.

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2. ***Mr. Ariola Knowingly and Willfully Accepted Excessive and Prohibited Contributions.***

A treasurer or other employee of a committee is not permitted to knowingly accept contributions in excess of the contribution limitations, or to knowingly accept contributions from corporations. 2 U.S.C. §§ 441b(a) and 441a(f). While Mr. Ariola was Deputy Treasurer of the Committee, he received, and did not refund, reattribute or redesignate \$4,500 in excessive contributions, and accepted, and did not refund, seven corporate contributions totaling \$7,750, as reflected on disclosure reports prepared by Mr. Ariola.²⁵ See 11 C.F.R. §§ 110.1 and 103.3(b).

In response to the Commission's reason-to-believe notification, Mr. Ariola admits, through counsel, that he knew some of the checks he received on behalf of the Committee were excessive contributions or corporate contributions, but that he did nothing to return or disgorge the checks (other than to enter the checks on disclosure reports to the Commission). RTB Response, p. 4. Given this admission, we believe the violations in this matter were knowing and willful.²⁶

Moreover, Mr. Ariola's recent guilty plea in federal court provides further demonstrates recognition that his acceptance of excessive and corporate contributions and the failure to refund

²⁵ These amounts include the excessive and corporate contribution described in the criminal matter. See footnote 22 *supra*. Mr. Longino's payment refunding his salary was received during Mr. Ariola's tenure as Deputy Treasurer. However, since the investigation revealed that the payment was not a contribution as defined by the Act, we recommend that the Commission not pursue Mr. Ariola in connection with the \$24,000 payment.

²⁶ The phrase "knowing and willful" indicates that "actions [were] taken with full knowledge of all of the facts and a recognition that the action is prohibited by law." 122 Cong. Rec. H 3778 (daily ed. May 3, 1976); see also *Fed. Election Comm'n v. John A. Dramesi for Cong. Comm.*, 640 F. Supp. 985, 987 (D.N.J. 1986) (distinguishing between "knowing" and "knowing and willful"). A knowing and willful violation may be established "by proof that the defendant acted deliberately and with knowledge" that an action was unlawful. *United States v. Hopkins*, 916 F.2d 207, 214 (5th Cir. 1990). In *Hopkins*, the court found that an inference of a knowing and willful violation could be drawn "from the defendants' elaborate scheme for disguising their . . . political contributions . . ." *Id.* at 214-15. The court also found that the evidence did not have to show that a defendant "had specific knowledge of the regulations" or "conclusively demonstrate" a defendant's "state of mind," if there were "facts and circumstances

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1 or disgorge those contributions violated the law. We believe that Mr. Ariola's guilty plea to the
2 criminal charges describing his receipt of an excessive and a corporate contribution in September
3 2000 and his failure to refund those contributions, establishes that as of September 2000 he knew
4 that excessive and corporate contributions were illegal, and that the appropriate remedy was to
5 refund the contributions. In the present matter, the excessive portion of the contributions were
6 made on or after September 2000, and the corporate contributions were made in October 2000.
7 See First General Counsel's Report dated May 3, 2001, pp. 14-19. Therefore, at the time the
8 contributions in the present matter were received, Mr. Ariola had the requisite knowledge that
9 they were illegal contributions and should have been refunded.

10 Based on Mr. Ariola's admission in response to the Commission's reason-to-believe
11 notification to knowingly receiving excessive and corporate contributions and not refunding
12 them, further reinforced by his guilty plea described *supra*, we recommend that the Commission
13 find that Mr. Ariola knowingly and willfully violated 2 U.S.C. §§ 441a(f) and 441b(a).
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from which the jury reasonably could infer that [the defendant] knew her conduct was unauthorized and illegal." *Id.* at 213 (quoting *United States v. Bordelon*, 871 F.2d 491, 494 (5th Cir.), *cert. denied*, 439 U.S. 838 (1989)).

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1 3. ***Mr. Ariola Failed to Disclose the Committee's Total Receipts for the***
2 ***Applicable Reporting Periods.***
3

4 The Committee's bank records and the F.B.I.'s financial analysis of those records reveal
5 that from July 2, 2000 through May 8, 2001 (the last deposit made in the Committee's bank
6 account), a total of \$18,248.78 in receipts to the Committee are not accounted for on FEC
7 disclosure reports.²⁸ See Attachment 3. Treasurers of political committees are required to file
8 reports of receipts and disbursements. 2 U.S.C. § 434(a)(1); *see also* 11 C.F.R. § 104.1(a). Each
9 report required to be filed under 2 U.S.C. § 434(a)(1) shall disclose the total amount of all
10 receipts received by the Committee. See 2 U.S.C. § 434(b)(2); *see also* 11 C.F.R. § 104.3(a).
11 Mr. Ariola admitted that as Deputy Treasurer he assumed the treasurer's duties. See discussion
12 *supra* at Section III.D.1.

13 It appears that Mr. Ariola had the requisite information at his disposal to fully report all of
14 the Committee's receipts, and as Deputy Treasurer, it was part of his duties. Yet, \$18,248.78 in
15 receipts were not reported on the disclosure reports prepared by Mr. Ariola. Commencing in
16 October 2000, he did all the hands on work of the Committee's banking, such as reviewing the
17 Committee's receipts, reconciling the Committee's bank statements, and preparing the
18 Committee's disclosure reports. Each quarter, two other campaign workers would present Mr.
19 Ariola with a box of receipts and copies of checks that were donated to the Committee.
20 Subpoena Response, ¶ 9. Mr. Ariola would then call PNB, where the Committee had its
21 checking account, for a copy of a bank statement. *Id.* Mr. Ariola would then attempt to match
22 the check copies with deposits listed on the bank statements. *Id.* Despite his access to the
23 Committee's receipts and bank records, he underreported the Committee's receipts by

²⁸ Mr. Ariola avers that he signed the 2000 October Quarterly Report. Subpoena Response, ¶ 6. That Report covers the period beginning July 1, 2000.

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1 \$18,248.78 on disclosure reports prepared by him. In addition to his detailed knowledge of the
2 Committee's finances, his status as a CPA indicates that he had the specialized knowledge and
3 training to accurately reconcile the Committee's receipts with its bank statements. *See* Subpoena
4 Response, ¶ 23. Given these facts, Mr. Ariola recklessly failed to fulfill his duties under the Act
5 and regulations.

6 Based upon the foregoing, we recommend that the Commission find reason to believe
7 that Mr. Ariola violated 2 U.S.C. §§ 434(a)(1) and (b)(2) in his personal capacity

8
9 **4. *Failure to Provide Contributor Identifying Information.***

10 We recommend that the Commission take no further action with respect to its reason-to-
11 believe finding that Mr. Ariola, as Deputy Treasurer, violated 2 U.S.C. § 434(b)(3)(A) in his
12 personal capacity for failing to provide a substantial amount of missing contributor identifying
13 information. On January 21, 2005, we were able to view the Committee's records which were
14 previously seized by the F.B.I. in July 2001. Among those records, we discovered the donor
15 cards that Mr. Ariola had claimed the Committee mailed to individuals and attempted to obtain
16 the missing contributor identifying information. Subpoena Response, ¶ 10. Those donor cards
17 contained requests for the required information set forth in 11 C.F.R. § 104.7(b)(4).²⁹
18 Furthermore, Mr. Ariola has stated that the Committee made a follow-up telephone call to
19 particular donors if the Committee did not receive a response to the letter. Subpoena Response,
20 ¶ 10. These factors provide evidence that attempts were made to obtain the missing contributor
21 identifying information. After the Committee's records were seized by the F.B.I. follow-up

²⁹ The donor card requested the contributor's name, mailing address, occupation, name of employer, and included the following statement: "Federal law requires occupation and employee information for donations to Federal campaigns."

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1 attempts to amend the reports to add the missing contributor identifying information were
2 impractical. Accordingly, we recommend that the Commission take no further action in
3 connection with its reason-to-believe finding that Mr. Ariola violated 2 U.S.C. § 434(b)(3)(A) in
4 his personal capacity.

5 ***E. Giordano for U.S. Senate Committee Received, and Did Not Refund, Excessive***
6 ***and Prohibited Contributions.***
7

8 As discussed *supra* in Sections III.A., B., and D. of this Report, the investigation revealed
9 the bank loan from PNB to the Committee was made in the ordinary course of business, that the
10 payments from Mr. Longino to the Committee did not constitute contributions as defined by the
11 Act, and that efforts were made to provide the missing contributor identifying information.
12 Therefore, we recommend that the Commission take no further action against the Committee in
13 connection with the bank loan, Mr. Longino's payments to the Committee, and the Committee's
14 failure to obtain missing contributor identifying information.

15 However, the Committee did receive and fail to refund \$3,500 in excessive contributions
16 and \$6,750 in prohibited contributions.³⁰ During our investigation, we reviewed the
17 Committee's bank records. The Committee has a bank balance of \$919.27. Due to the
18 Candidate's current incarceration, this Committee will not be able to raise additional funds. The
19 Committee is *de facto* defunct, and has not filed a disclosure report since the 2000 Year-End
20 Report. Given the Committee's limited resources and inability to raise additional funds, we
21 recommend that the Commission enter into pre-probable cause conciliation efforts with the

³⁰ As discussed *supra* in footnote 1, the Candidate's spouse and his father-in-law made excessive contributions to the Committee in connection with the certificate of deposit.

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1 IV. DISCUSSION OF CONCILIATION AND CIVIL PENALTIES

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V. RECOMMENDATIONS

1. Take no further action against Patriot National Bank, and close the file as to this respondent.
2. Take no further action against Timothy Longino, and close the file as to this respondent.
3. Take no further action against Philip Giordano, and close the file as to this respondent.
4. Take no further action against Thomas M. Ariola, Jr. in connection with 2 U.S.C. § 434(b)(3)(A).
5. Take no further action against the Giordano for U.S. Senate Committee and its treasurer in connection with 2 U.S.C. §§ 432(i) and 434(b)(3)(A).
6. Find reason to believe that Thomas M. Ariola, Jr. violated 2 U.S.C. §§ 434(a)(1) and (b)(2) in his personal capacity, and enter into pre-probable cause conciliation with this respondent.
7. Enter into conciliation with the Giordano for U.S. Senate Committee and its treasurer prior to a finding of probable cause to believe in connection with 2 U.S.C. §§ 441b(a) and 441a(f).
8. Approve the attached Factual and Legal Analysis for Thomas M. Ariola, Jr.
9. Approve the attached conciliation agreements.
10. Approve the appropriate letters.

Lawrence H. Norton
General Counsel


Rhonda J. Vosdingh
Associate General Counsel
for Enforcement

Date: 5/25/05

BY: 

Sidney Rocke
Assistant General Counsel

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Christine C. Gallagher
Attorney

Attachments

1. Newspaper article.
2. F.B.I. Financial Analysis regarding Mr. Longino's contributions.
3. F.B.I. Financial Analysis regarding total receipts.
4. Proposed Factual and Legal Analysis for Thomas M. Ariola, Jr.
5. Proposed Conciliation Agreement for Thomas M. Ariola, Jr.
6. Proposed Conciliation Agreement for Giordano for U.S. Senate Committee and its treasurer.

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Below is a cache of <http://www.rep-am.com/giordano/longino1025.htm>. It's a snapshot of the page taken as our search engine crawled the Web. We've highlighted the words: **timothy longino**
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Giordano's ex-chief of staff quits as firefighter

Thursday, October 25, 2001

By Suzan Bibisi

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WATERBURY — After 14 years as a Waterbury firefighter, including a controversial leave of absence to serve as Mayor Philip A. Giordano's chief of staff, Timothy Longino has resigned from the Fire Department.

Longino, who has been working for LesCare Kitchens Inc., while he's served as captain in the Fire Department, will focus on LesCare, where he recently was promoted to managing director. He is third in line at the company, run by James Lestorti, president and chief executive officer, and his brother, Lou, chief financial officer.

The Waterbury-based kitchen cabinet company is expanding, adding 110 new jobs, and Longino is in charge of the hiring.

Longino resigned from his \$54,837-a-year Fire Department job on Tuesday. Under the current fire department contract, Longino can't collect a pension until he's 50 years old. And because he hasn't served 20 years, he won't collect a full pension. Longino also was required by contract to give back his unused sick time, so he won't be paid for those days.

It is unclear what Longino's pension would be if he decides to accept one. On Wednesday, the city payroll office hadn't yet calculated his pension, which would be based on 13 years of work. Longino said he hadn't decided whether to accept his city pension.

Longino's city employment became an issue last spring when the Republican-American learned that most of his paycheck for serving as the mayor's chief of staff from April 1999 to May 2000 came from the Fire Department's budget. Although Longino took a leave of absence from the department to work as chief of staff, he was paid \$1,054 a week from the Fire Department budget plus \$243 a week from the Mayor's Office budget, for a total of \$1,297 a week.

Longino left the mayor's office on May 1, 2000, to serve as Giordano's U.S. Senate campaign manager. When he did that, he collected vacation pay through the end of May. He also accrued his pension during his leave of absence, which lasted until September 2001, when he left the Senate campaign to return to the Fire Department, assuming his position as captain.

At the time, the city was assembling one of its tightest budgets in years, and Democratic aldermen

ATTACHMENT

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<http://216.109.117.135/search/cache?p=Timothy+Longino&ei=UTF-8&cop=mss&toggle=...> 10/6/2004

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complained about the arrangement the mayor brokered for Longino, his longtime friend and political adviser.

The two parted bitterly when Giordano accused Longino of giving unnecessary Senate campaign printing business to the father of Longino's girlfriend at the time. The matter has since been resolved. Longino has remained silent on Giordano, who was arrested on July 26 on charges that he enticed two girls, ages 9 and 10, to have sex. The mayor, indicted on multiple child sex charges, remains in federal custody in an undisclosed location. Federal agents also are investigating allegations of municipal corruption.

Longino, 36, has worked two jobs for as long as he was active in the Fire Department. When he worked full-time as director of legislative affairs for state Senate Republicans, he also worked full-time as a firefighter. He made about \$132,000 a year from both jobs. When he resigned from the legislature to serve as Giordano's chief of staff, he said the net loss to his income would be about \$90,000, considering the lost overtime in the Fire Department.

Longino said he will concentrate on LesCare, a \$100 million company with 350 employees, which is expanding over the next eight years.

Having one job also gives him more time to spend with his boys, ages 10, 8 and 4, said Longino, who is divorced.

"I won't have to work holidays, nights and weekends," he said

"It's the best opportunity of my life," Longino said. "They are the leaders in the cabinet industry and it's an honor for me to be asked to step into this position. I'm ready to roll."

ATTACHMENT 1

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ATTACHMENTS 2-3 HAVE BEEN REMOVED

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